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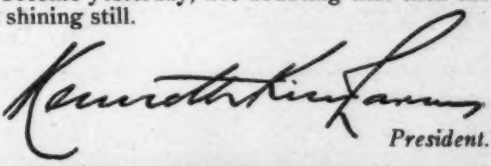
The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.

December 4, 1892

On December 4, 1942 we shall celebrate our semi-centennial. Perhaps by then we shall begin to feel as old in years as we now consider ourselves old in experience. An experience of thirty-nine years is ours. Our original charter was filed on December 4, 1892. Friday, December 4, 1931 is our thirty-ninth birthday. We are as enthusiastic in our work as at the beginning. Youth, with its exuberance of energy and of ambition, we still enjoy. Virility and strength have increased with the years. How do you intend to feel at 39,—or, perhaps, how did you feel at 39? Well, that's the way we feel. Young, but not too young. Old, but not too old. Heir to, yes, but not possessed of, the wisdom of the ages (we are far too wise to make claims in that direction), but possessed of the cumulated knowledge of the thirty-nine years of devotion to a special line of work. And several of our personnel who were "in" at the start, and many who came to us soon thereafter, are with us yet, and as actively engaged in our concerns as ever. The present which until now was the future will quickly become the past. To-day, the sun is shining; in retrospect we know of no day when 'twas otherwise; the rule will hold—so each day with unabated confidence we await the morrow, so soon to become yesterday, not doubting that then the sun will be shining still.



President.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for December

Talks on Foreign Corporations

Whenever the existence of the foreign corporation laws of a particular State is brought forcibly to the attention of an unqualified foreign corporation doing business in the State, through its failure to comply with local statutes, the corporation usually feels that it has come in contact with a severe, unjust and drastic law, and seemingly does not consider that its neglect, or refusal or failure to give careful thought to whether its operations are, in the first instance, intrastate or interstate, is alone directly responsible for the infliction of the penalty.

It may be said that the real reason for the enactment of the foreign corporation statutes by the various States is to compel obedience to local law and to require a corporation doing business in the foreign State to submit to that State's jurisdiction. The State is not interested in aiding its citizens in repudiating contractual obligations, or in inflicting personal liability for contracts of an unqualified foreign corporation on its officers, or agents, or stockholders, or in suspending the corporation's right to sue until it becomes qualified, or in otherwise inflicting penalties on officers, agents, etc. of the foreign corporation according to the statutes of the State involved. These result not from the State's desire to inflict them, but solely from the corporation's failure to comply with local law before doing intrastate business in the State. And it is well known that failure to comply has proved extremely costly in certain cases.

Although the public policy involved is to force corporations to comply with the law, the means employed are often of great benefit to those who deal with the corporation and who find when they are sued that they have a perfectly valid defense to any claim the corporation may make. The possibility of this defense has become very well known and every suit by a foreign corporation is now carefully scrutinized for the easily proved and often insurmountable plea of non-conformance with foreign corporation laws. Because of this policy of self interest by possible or actual litigants, a foreign corporation's chances of escaping all forms of penalties is reduced to a minimum.

Therefore, corporations intending to do business in States other than the State of incorporation should submit their plan of operation to counsel, as it is often possible, by reference to the statutes and decisions, to determine whether the operations of the corporation in the foreign State do or do not require compliance with the local statutes. By so doing the foreign corporation can relieve itself of the penalty provisions of the various foreign corporation statutes.

Domestic Corporations

Colorado.

Corporation organized to practice architecture may not practice, being a corporation. In this action, into the merits of which we need not go otherwise, seeking to restrain the carrying out of a city building-contract it was contended, *inter alia*, that the contract was invalid because entered into with a corporation organized to practice architecture, which, being a corporation, was incompetent to practice. The Supreme Court of Colorado, reverses the judgment below dismissing the complaint and remands, holding that under the Colorado law a corporation may not practice architecture. The corporation was organized (in Colorado) to practice architecture and to advance the art, under the law relative to co-operative associations. "The only feature which distinguishes it from ordinary business corporations is certain restrictions upon membership and participation in profits." By the articles of incorporation "it might, in the process of development, become entirely owned and controlled by persons other than architects." The presently restricting by-laws may be amended at any time to permit acceptance of those who are not architects. All the members (stockholders) of the association were licensed architects; the association itself was not licensed. The court says that, under the law, to practice architecture a license is necessary; that a corporation is incapable of becoming a licensed architect as it cannot meet the statutory requirements (examination for qualifications, character establishment, etc.)—such, "necessarily exclude such a notion"; and that "the association was incompetent to contract to furnish architectural services." It is said, also: "We do not wish to be thought to say that the Legislature may not permit the granting of licenses to corporations, but to say that we are of opinion it has not done so." It was noted that the law provides that "any * * * corporation who shall be engaged in the planning * * * of buildings for others * * * shall be regarded as an architect" and that provision is made for a fine in event a corporation practices architecture without having procured a license. Johnson-Olmstead Realty Co. vs. Denver, et al., 1 P. (2d) 928. Carle Whitehead, Albert L. Vogl, and Floyd F. Miles, all of Denver, for plaintiff in error. Thomas H. Gibson, Karl Brauns, and Charles H. Haines, all of Denver, for defendants in error City and County of Denver and its Officers. Gabriel, Mills & Mills, of Denver, for defendant in error Allied Architects' Ass'n.

Louisiana.

A president in sole control of a corporation is presumed to be authorized to do in name of corporation all that the corporation can do lawfully. It is not essential to go into the merits here. The

Supreme Court of Louisiana says: "The evidence clearly shows that Bartlett and Mrs. McCormack abandoned and turned over the conduct, management and control of the brick company to Roberts, who solely and entirely directed the affairs and managed the business of the corporation. In these circumstances, it will be presumed that Roberts was authorized to do in the name of the brick company whatever that company might lawfully do and no special authorization or ratification of his acts need be shown." And, in addition: "Even if it be conceded that the transactions with the bank were ultra vires on the part of the brick company, nevertheless, they were fully completed, the sole stockholders and directors acquiescing therein, and the law will leave the parties where it finds them." City Sav. Bank & Trust Co. vs. Shreveport Brick Co., 134 So. 397. Crain & Johnston and Jackson & Smith, all of Shreveport, for intervener appellant. Hunter, Morgan & Hunter, of Shreveport, for appellant Shreveport Brick Co. Roberts & Naff and Blanchard, Goldstein, Walker & O'Quin, all of Shreveport, for appellee.

Massachusetts.

Right of preferred-stock holders to unearned cumulative dividends from depleted capital on dissolution of corporation. The charter provisions, here, relative to preferred stock, are that the holders thereof shall be entitled to annual cumulative dividends "payable from the surplus or net profits" and that, on dissolution, such stock shall be paid in full, principal plus "unpaid dividends accrued thereon." For a period of years no dividends had been paid though at the end of that period the total surplus account, earned and capital, exceeded in amount the amount of accrued but unpaid preferred-stock dividends, the directors deeming it unwise to declare and pay such dividends. Thereafter a plan of funding the amount of unpaid cumulated dividends by the issuance of second preferred stock was adopted. Certain holders of the first preferred shares, including the plaintiffs here, refused their assent to this plan and declined to accept the new shares in release of their claims to back dividends. Now, on winding-up, the clear assets are insufficient to pay par on the first preferred. It is proposed to distribute the assets pro rata in accordance with the par preferred stock holdings. Those who declined to agree to the funding plan referred to above insist in this suit (1) on their prior right to receive the aggregate of the unpaid cumulative dividends to the time the funding plan was put in operation before any prorated payment is made on account of the principal of the preferred stock (on the theory that the issuance of the second preferred stock to those who agreed to the plan was in effect an accumulated dividend payment as to them and that those who did not agree are now entitled to their corresponding dividends, in cash), or, in the alternative, (2) that all the amount of accrued but unpaid cumulative dividends on the preferred stock to the dissolving date, is to be added to the par value of such stock to fix the proper prorating basis for the distribution of such assets as remain. The

Supreme Judicial Court of Massachusetts (Suffolk) denies the first claim but sustains the alternative contention saying that whereas, not only by the terms of the contract but otherwise and in any event, dividends could be paid from earnings only, while the corporation was a going concern, engaged in business, such is not the case on dissolution, for under the contract, all creditors' claims having been satisfied, the preferred-stock holders then are entitled to the "principal amount of their shares and the unpaid dividends accrued thereon," and that this means that "the holders of preferred stock are entitled both to the par value of their stock and to dividends which have not been declared or paid but which would have been declared and paid if there had been surplus or net profits of the corporation wisely applicable to such dividends during the period when no dividends have been paid. This appears to us to be the sense obvious to the common understanding from the words used. Interpreted in their normal and ordinary, as distinguished from their technical and strained, meaning, this is their significance." Decree for prorated distribution on basis of par plus cumulative dividends, from the beginning for the plaintiffs (the dissentors), from the date of the adoption of the plan for those who accepted the second preferred stock. Willson et al., Executors, vs. Laconia Car Co., et al., 176 N. E. 182. R. Wait, of Boston, for the plaintiffs. M. Wambaugh (D. M. Hill with him), both of Boston, for the defendants.

Michigan.

Action by stockholders to recover for their own benefit from directors moneys due by the latter to the corporation after all assets have been disposed of by trustee in bankruptcy and trustee discharged, unsecured creditors having received small fraction only of their allowed claims. Into the merits, or otherwise than to make the following quotation, we do not go. The Supreme Court of Michigan says: "It would be a strange doctrine for a court to announce a rule that certain stockholders, having knowledge of facts which render the directors liable to the corporation for negligence in the handling of its fiscal affairs, may sit quietly by and allow proceedings in bankruptcy to be carried on and the assets of the corporation disposed of, under which the creditors receive but a small percentage of their claims as allowed, and, after the discharge of the trustee, institute a suit to recover money due the corporation from the directors on account of such negligence and be themselves entitled to the sums so recovered to the exclusion of the claims of the creditors." Curtiss et al. vs. Wilmarth, 236 N. W. 773. For various interests: McAllister & McAllister; Ward & Strawhecker; Butterfield, Keeney & Amberg; Travis, Merrick, Warner & Johnson: of Grand Rapids.

Mississippi.

Transitory actions against domestic and foreign corporations. The Supreme Court of Mississippi, Division A, says: "By Sec-

tion 4140, Code 1930, a domestic corporation is required to maintain an office in the county of its domicile. When this office is in charge of its own officers, it is not required to designate a resident agent for service of process upon it, but it cannot escape its statutory liability to suit on a transitory cause of action, where the cause of action accrued, by failing to designate such an agent. Foreign corporations are required to designate a resident agent, and, by service of process upon said agents, they are subject to suit on any transitory cause of action in any county of the state where such cause of action accrued. A domestic corporation is required to maintain an office in the county of its domicile, and place this office in charge of its own officers, or in charge of a designated agent, and, in either event it is subject to suit on a transitory cause of action in the county where such cause of action accrued, by service of process on the officer or agent in charge of its home office. Consequently, the court below committed no error in overruling the various motions and pleas challenging the jurisdiction of the court." Natchez Coco-Cola Bottling Co. vs. Watson, 133 So. 677. Kennedy & Geisenberger, Natchez, for appellant. Truly & Truly, Fayette, for appellee.

Missouri.

Right to use corporate name acceptable to Secretary of State and acquired by grant of charter not absolute under all circumstances. In an action to enjoin the defendant from carrying on business under its corporate name (Empire Finance Corporation) or under any other name containing the word "Empire," the Empire Trust Company prevailed below. The Kansas City Court of Appeals (Missouri) affirms. The court says, *inter alia:* "Defendant also contends that the name acquired by the grant of the charter is a vested right which cannot be taken away without its consent, and that the right to use the name conferred by the charter is a franchise. We cannot allow this contention. There may be circumstances under which the rule contended for would apply, but it does not apply where the offending corporation adopts and uses the name of an older corporation in such a way or manner that the public may be deceived or confused as to which of the corporations it is dealing with. It is also asserted that the discretion given by statute (Rev. St. 1929, § 4541) to the secretary of state in determining whether the defendant's name is the same or an imitation of plaintiff's name is conclusive. The secretary of state, in passing on that question, does not act judicially, and even if he did, his act, without the knowledge or consent of plaintiff, would not be binding on it." Empire Tr. Co. vs. Empire Fin. Corp., 41 S. W. (2d) 847. L. J. Eastin, St. Joseph, for appellant. Culver, Phillip & Voorhees, St. Joseph, for respondent.

New York.

Removal of a director before term for which he was elected has expired. Plaintiff was elected director of a New York corporation

for a three-year term. At the time of his election neither the charter nor the by-laws of the corporation contained any provision relative to removal of a director. Thereafter both the charter and the by-laws were amended to provide for the removal of a director by a two-thirds vote of the stockholders or by a two-thirds vote of the directors ratified by a two-thirds vote of the stockholders, provision being made for adequate notice and opportunity to be heard. Action is for a permanent injunction to restrain the directors from removing or attempting to remove the plaintiff. The New York Supreme Court, Special Term, New York County, denying the motion, says: "As the stockholders of the defendant corporation, irrespective of any amendment of their charter, had the power to remove a director for cause upon proper hearing, the fact that the amendment to the charter and by-laws delegated the power to remove to the board of directors is not an interference with the vested rights of plaintiff, for it is merely conferring upon others the right to do what the corporation itself previously had. At any event, even under such amendments, the trial by the board of directors and their action thereon is not conclusive upon the plaintiff for their action does not become effective unless and until it has been confirmed by the stockholders." Fox vs. Cody et al., 252 N. Y. Sup. 395. Burnstein & Geist, of New York (Henry C. Burnstein, and Roy Plant, both of New York, of counsel), for plaintiff. Moses & Singer, of New York (Sam L. Cohen and Alfred W. Bressler, both of New York, of counsel), for defendants.

Texas.

Damages not recoverable from stockholder for death of employee of corporation by accident while engaged in corporation's business. Action against a corporation and one of its stockholders for damages for death of an employee of the corporation resulting from an accident while he was engaged in the corporation's business. Judgment against the corporation; the jury found that the company was fraudulently incorporated to carry on the stockholder's individual business in an attempt on his part to avoid personal liability for the development of the mineral rights in which he was interested; the trial court denied recovery against the stockholder; plaintiff appealed from the judgment last mentioned. The Court of Civil Appeals of Texas (Amarillo), affirms and says: "The Navillus Oil Company, having been granted a charter and incorporated by the state of Texas for a legal purpose, having begun and continued to transact business in the name of the corporation for a period of more than a year, and being a going concern at the time of the explosion on June 27, 1928, and the deceased being in the employ of the corporation at the time of his death, in our opinion the appellant could not attack the validity of the corporation and, under the record in this case and the findings of the jury, was not entitled to a judgment against the appellee [stockholder]." Sayers vs. Navillus Oil Co. et al., 41 S. W. (2d) 506. Works & Bassett, of Amarillo, for appellant. Birge & Nelson, of Amarillo, for appellee.

Washington.

State charter having been granted legal status of corporation may not be questioned in collateral proceedings; individual liability of stockholders as copartners. Action is on a contract, entered into with a corporation, against the then sole stockholders as copartners engaged in the business of the corporation on the ground that though articles of incorporation had been filed as required by statute with the secretary of state of Washington the articles had not been filed in the office of the county auditor of the county in which the principal place of business of the company was intended to be located, as also provided by statute. Judgment below for plaintiff. The Supreme Court of Washington reverses and orders the action dismissed. The court says: "It is useless to discuss the texts and authorities cited because of the state of the law here. It is well settled here, in what we consider the weight of authority, that when a body of men are acting as a corporation under color of apparent organization is pursuance of some charter or enabling act, their legal authority to act as a corporation cannot be questioned collaterally but only in a direct proceeding in the nature of quo warranto." And: "Contrary to the assertion of respondent, we consider the great weight of authority is that the individual members who promote a corporation, which becomes at least a de facto corporation, by having attempted in good faith, so far as the record shows, to organize a corporation, followed by user as a corporation, cannot be held individually liable as partners." Refsnes vs. Myers et al., 2 P. (2d) 656. R. J. Boryer, Carkeek, McDonald & Harris, and H. C. Tingvall, all of Seattle, for appellants. Vanderveer, Beardslee & Bassett, of Seattle, for respondent.

Unfair competition; similarity of corporate name: on the use of a family surname as part of a trade name. In settlement of decree, the court having held that defendant (Horluck's, Inc.) had unfairly competed with plaintiff (Horlick's Malted Milk Corporation) in its business by defendant's use of the word "Horluck" ("Horluck" is the surname of the organizers and principal stockholders of defendant) in association with the words "Malted Milk," 43 F. (2d) 767. Plaintiff contends that the decree should provide for an accounting for defendant's profits. The United States District Court, W. D. Washington, N. D., now says that while plaintiff is entitled to an injunction and its damages it may not recover defendant's profits unless it has been shown beyond a reasonable doubt that defendant was guilty of willful fraud in the use of the enjoined name. "Th right to deny a man the free use of his own name in connection with his business is not so plain and clear as to show willful fraud, although he may be fully aware of the use by another of a similar name in a similar business." Willful fraud beyond a reasonable doubt was not shown, the court says. And then: "The first mistake, if monopoly was the aim, was made by the predecessors of

—and a lawyer may

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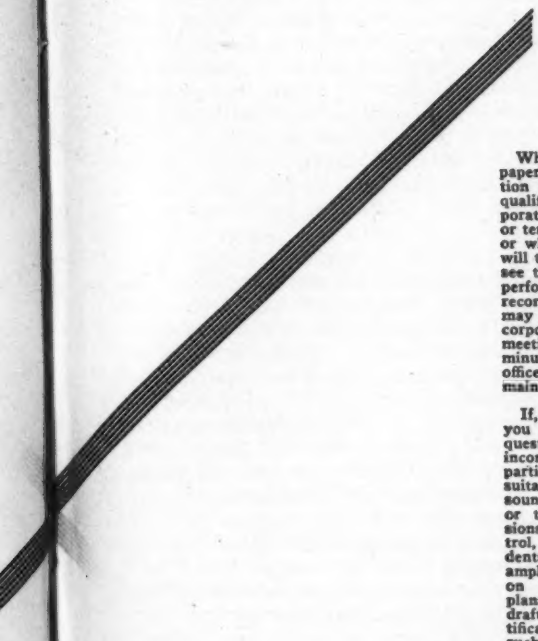

When an attorney has all the papers ready for the incorporation of a company, or for its qualification as a foreign corporation, no matter in what state or territory of the United States, or what province of Canada, we will take them at that point, and see that every necessary step in performed — papers filed, copies recorded, notices published, as may be required in the state; incorporators furnished, their first meeting held, directors elected, minute book opened, statutory office established and thereafter maintained.

If, before drafting the papers, you wish to study carefully the question of the best state for incorporation of your client's particular business, the most suitable capital set-up or the soundest purpose-clauses for it, or the most practicable provisions for management and control, we will bring you precedents from the very best examples of corporation practice on which to formulate your plans, or, if you desire, will draft for your approval a certificate and by-laws based on such precedents.

If you are uncertain as to the necessity of a client's qualifying as a foreign corporation in any state, we will, upon submission of the facts, bring you digests (with citations) of leading court decisions showing the attitude of each state involved on the kind of business transacted by your client.

plaintiff in adopting an individual name—a surname—that of the founders of the business, as a trade name. Its goods so marked were 'distinguished' from the goods of all others just so long as a man of the same or a similar name did not engage in the same business, using his name in that business. Being long first in the field, time, and the results worked in the course of time, partly cured this mistake, and the defendant, because of this, is no longer entirely free to associate the surname of its founders with its business as it sees fit. Plaintiff will be protected by a court of equity from loss on account of that confusion which its predecessor in the first instance invited in adopting the use of an individual name—a surname—to designate its wares, but though a court of equity will not only enjoin defendant from further unfair competition, but will do complete justice and aid in restoring to plaintiff that which it has lost through defendant's failure to do all that was reasonable to distinguish it from plaintiff's goods, it does not follow that plaintiff should recover defendant's profits." Horlick's Malted Milk Corporation vs. Holluck's Inc., 51 F. (2d) 357. Edward S. Rogers, Allen M. Reed, and William T. Woodson, all of Chicago, Ill., and Palmer, Askren & Brethorst, of Seattle, for plaintiff. C. A. Reynolds, Harry Ballinger, C. T. Hutson, and G. H. Boldt, of Seattle, for defendant.

Wisconsin.

Restricting right of stockholder to alienate his stock, at will. The charter of the Wisconsin corporation here involved provides that a stockholder desiring to dispose of his shares "must first offer them for sale to the remaining stockholders, it being the intention hereof to give them a preference in the purchase of the same." Any attempted sale otherwise is declared to be void. The by-laws provide that "no member can sell to one not a stockholder without first offering his stock for sale to the other stockholders." Here there was a sale to another stockholder without offer however to all stockholders. The lower court held the sale invalid. The Supreme Court of Wisconsin reverses. The court says that "it is well established in this state that a corporate by-law which prohibits the alienation of shares of stock, or which amounts to an unreasonable restraint upon their transfer, is void," but that reasonable restrictions against purchase of stock by outsiders, rivals, or other disturbers are permissible, and that the present restrictions are to be so characterized. It was contended, here, that by the charter and by-law the "stockholders have, by contract with one another, preserved a sort of preemptive right which enables each at his option to preserve his proportionate ownership and control of the corporation." Against this it was urged that the sole intention was to prevent the sale of stock to outsiders and that there is no restriction on the sale by one stockholder of his stock to another stockholder, and with this view the court agrees. Rychwalski vs. Milwaukee Candy Co. et al., 236 N. W. 131. Rudolph L. Forrer, of Milwaukee, for appellants. Orth & Orth, of Milwaukee, for appellee.

Foreign Corporations

Florida.

On the right of receiver to sue in a foreign jurisdiction. The Supreme Court of Florida, Division A, states the general rule that a receiver has no extra-territorial power "which can give him, upon the principle of comity, a privilege to sue in a foreign court or another jurisdiction, as the judgment creditor himself might have done." The court then says that the doctrine seems to be well established in the Federal courts that a receiver "who has not been vested with title by transfer or statute, will not even as a matter of comity be allowed to maintain a suit in a jurisdiction other than that of his appointment." And then, continuing—"Such, however, is not the rule toward which the trend of modern opinion turns in the state courts. Whether the receiver claims a right to sue under substantive law as the assignee of the property or in whom the title vests, or whether the right to sue is asserted under his powers as a mere court officer or the order of the court appointing him, wherever the suit in the foreign jurisdiction works no hardship upon local creditors or interferes in any manner with the enforcement of their claims, and when the removal of the property or assets of the foreign corporation from the local jurisdiction is not against the interest of local creditors, the court to whom application is made for leave to sue may grant the authority on grounds of comity." And further: "The question of who are creditors may well lead to the consideration of the state's claim under a statute requiring foreign corporations to pay a charter fee as a condition precedent to the transaction of business in this state and the obligation incurred for their failure to comply with the law. The matter of the existence of domestic creditors, however, whose claims might in the practical application of the rule warrant a denial of the right to maintain the action, would seem to be defensive." Richardson et al. vs. South Florida Mortgage Co., 136 S. 393. Neeley & Neeley, of Tallahassee, and Robert M. Thomson, of Miami, respectively, appeared.

Georgia.

Action against qualified foreign corporation on account of business transacted out of state barred in Georgia courts. Action was brought in a Georgia court by a Louisiana corporation against another Louisiana corporation, the latter having qualified to do business in Georgia, and having an office, a place of business, and an agent (on whom service was made) in Georgia, on a contract entered into and to be performed in Louisiana. The trial judge dismissed the petition for lack of jurisdiction. The Supreme Court of Georgia finds no error and affirms, saying: "We hold that suit on a transitory cause of action, against a non-resident corporation, is not within the jurisdiction of Georgia courts, unless the defendant voluntarily consents, or that the action grows out of business trans-

acted by the defendant, which business must be a part of the business for which it was organized or the cause of action must bear a relation to such business, conducted in this state, and there must be proper service." Louisiana State Rice Milling Co., Inc. v. Mente & Co., Inc., 159 S. E. 497. Adams, Adams & Douglas, of Savannah, for plaintiff in error. Hitch, Denmark & Lovett, of Savannah, for defendant in error.

Illinois.

Service of process on foreign corporation must be made in county in which the suit is brought. It was argued here that "since the Corporation Act requires that foreign corporations designate an agent for service, the statute is to be construed to mean that service may be had on such agent by summons issued in any county of the state in which suit may be brought, whether such corporation or its agent is a resident of that county or some other county of the state." Section 8 of the Practice Act provides that service must be had on an officer or agent of the corporation found in the county where the suit is brought. The Supreme Court of Illinois says that this section is not confined in its terms to domestic corporations, but applies likewise to foreign corporations. It was argued here by defendant-in-error that the courts of any county may by summons issued to another county and served on the agent of the foreign corporation acquire jurisdiction of such corporation. The court says, reversing the judgments below and remanding with directions to quash the service of summons: "The requirement that an agent be named upon whom service of summons may be had in any suit brought against the corporation cannot be enlarged to mean that suits may be filed in any county and service of summons be had on the corporation by serving the summons on the agent in the county in which he resides, as was done in this case. So construed, it would be in direct conflict with Section 8 of the Practice Act, declaring that jurisdiction of a corporation may be acquired only when the officer or agent shall be found and served in the county where the suit is brought." Craig vs. Sullivan Machinery Co., 176 N. E. 353. Fisher, Boyden, Bell, Boyd & Marshall, of Chicago, and Hogan & Coale, of Taylorville (Darrell S. Boyd and Earl K. Schiek, both of Chicago, of counsel), for plaintiff in error. Leslie J. Taylor, of Taylorville, for defendant in error.

Missouri.

On what constitutes "doing business" in state by foreign corporation. Plaintiff here is an Ohio corporation not licensed to do business in Missouri. It was urged that as it was a foreign corporation and was "doing business" in Missouri, it could not bring the action in Missouri courts. The St. Louis Court of Appeals (Missouri) affirms the judgment below for plaintiff. The Ohio corporation "has no office, place of business, employees, or stock of goods" in Mis-

souri. Its sales are effected "through a broker or distributor from a point in another state." In the instant case "and presumably as a usual custom" the distributor bought the machine (around which the controversy turns) from the plaintiff and then sold it to defendant, taking a series of notes and a conditional sales contract from him, all of which he then in turn indorsed and assigned to plaintiff. This course of action by the Ohio corporation does not constitute "doing business" in Missouri but is interstate commerce, the court says. Gen. Excavator Co. vs. Emory, 40 S. W. (2d) 490. W. J. Becker, St. Louis, for appellant. J. C. McAtee, Clayton, for respondent.

New York.

Controlling and managing from New York a corporation foreign to New York constitutes "doing business" in New York by the corporation. One of the defendants here is a Mexican corporation engaged in milling ore in Mexico. Service of process was made on its president, in New York, the validity of which was questioned. The corporation is wholly owned by a Maine holding corporation having its office in New York City. The officers of the Maine company are officers of the Mexican company also. It was shown to the court's satisfaction that the Mexican corporation's affairs were managed and controlled by the officers referred to, in and from their New York City office where they were permanently located. No "business" (unless the management and control be such) was done by the Mexican corporation in New York. The New York Supreme Court, Special Term, Chemung County, holds that the Mexican company was "doing business" in New York. "It was controlled, directed, and managed by its president and certain other officers from their office and headquarters in New York. In effect, the executive office of said defendant was in New York and its executive officers there performed their duties as such. They did this, not casually and occasionally but systematically and regularly, permanently and continually from its incorporation to the present time. We think it was 'doing business within the State in such manner and to such extent as to warrant the inference that it is present here.'" And, "we think the cases we have cited show that it is not essential that a foreign corporation locate any physical assets or carry on any mechanical operations in New York. It is enough if its executive office is here, wholly or in part; if its officers and/or representatives here exercise control, give directions, and manage its business." The service was held to be good and the court assumed jurisdiction. Stark vs. Howe Sound Co., Inc., et al., 252 N. Y. S. 233. Gaylord Riggs, of Elmira (David N. Heller and Gardner & Moseson, all of Elmira, of counsel), for plaintiff. Stanchfield, Collin, Lovell & Sayles, of Elmira, for defendant.

Ohio.

On "doing business" in Ohio by a foreign railroad company. Serv-

ice of process was made for the C. B. & Q. Railroad Company on its "General Agent" for Ohio and certain other states, whose office was in Cincinnati. The trial court quashed the service. The Ohio Court of Appeals (Hamilton County) reverses and remands. That the one on whom service was made was the company's "general agent" in Ohio, and so, a managing agent for it, was not denied, apparently. But to hold the service good it was necessary to find that the company was "doing business" in Ohio. It has no trackage in the state; the "general agent" sells no tickets, issues no bills of lading, and closes no contracts. The company contended that the sole function of the "general agent" was to solicit business. However, says the court, "we have quoted from the record showing the agent exercised discretionary powers over claims presented." So, the court finds that the C. B. & Q. was "doing business" in Ohio. American Laundry Machinery Co. vs. C. B. & Q. R. Co., 177 N. E. 533. J. R. Rohrer, of Cincinnati, for plaintiff in error. A. B. Benedict and C. G. Werner, of Cincinnati, for defendant in error.

South Carolina.

Law stated on venue in suit against a foreign corporation and another. The Supreme Court of South Carolina says: "If a foreign corporation, whether or not domesticated, having an agent and office for the transaction of business in a particular county, is sued in that county with a resident of another county of the state, the case may be properly tried in the county in which the action was brought. If the foreign corporation is sued in a county where it has no agent or place of business, along with a co-defendant who is resident of another county of the state, the place of trial should be changed to the county of the residence of the co-defendant. We have no statute stating plainly our conclusions. We have gathered them from the decisions of this court on the subject." A motion in the lower court, by the defendant company and the co-defendant, for a change of venue was denied. The Supreme Court affirms. Campbell vs. Mutual Ben. Health & Acc. Ass'n of Omaha, Neb., et al., 159 S. E. 490. Sloan & Sloan, of Columbia, for appellants. Andrew J. Bethea and E. J. Best, both of Columbia, for respondent.

Taxation

Michigan.

Franchise taxes assessed after appointment of receiver for periods during receivership not collectible from receiver. Here, a receiver operated the business of a Michigan mercantile company for nearly four years; then all mercantile assets were sold. The question: During the period of operation did the receiver become obligated to pay the Michigan annual franchise tax, assessed subsequent to his appointment, for and on behalf of the corporation? The United

States Circuit Court of Appeals, Sixth Circuit, reversing the court below, answers the question in the negative. The court says that the proper decision depends on whether or not the receiver, by operating the business, exercised or used any of the franchises of the corporation; if he did, liability attaches; if he did not "it is extremely difficult, if not impossible to justify the imposition of a tax against the receiver, as such": and it is held that he did not. The ruling is contrary to that made by the Michigan Supreme Court in the Detroit Properties Corporation case (236 N. W. 850—The Corporation Journal for November, 1931, page 42). The Federal court says that the distinction suggested there between the corporation's franchise "to do" and that "to be" is well enough in the case of a public utility, but that when a mercantile corporation is involved the two are inseparable for the right "to do" a mercantile business is inherent and is not a special privilege subject to a franchise. "Several cases of mercantile corporation receiverships boldly announce the broad rule that the franchise tax is payable by the receiver whenever he continues to operate the business. * * * Ohio vs. Harris, 229 Fed. 892 (dictum) (C. C. A. 6th). * * * The dictum in Ohio vs. Harris, supra, is disapproved." The corporation itself may remain liable: if its properties or any part thereof are returned to it or a surplus is distributable to stockholders. Here, "should it appear that a surplus over indebtedness was payable by the receiver to stockholders, for and on account of their stockholdings, such fund would be chargeable with the claim of the State for franchise taxes, for, to this end alone, the corporate existence must be regarded as continued for the stockholders' benefit." The Michigan Trust Company, Receiver vs. Michigan, Commerce Clearing House Court Decisions Reporting Service, Requisition No. 50903.

Oklahoma.

Law imposing income tax on individuals is not unconstitutional on ground that no similar tax is imposed on corporations. Appellant contends that the Oklahoma statute in question denies him the "equal protection of the laws" because it undertakes to impose a tax upon the incomes of individuals and to exempt therefrom corporations engaged in the same business. The United States Circuit Court of Appeals, Eighth Circuit, affirms the judgment below upholding the law. The court points out that if an income tax is imposed on both corporations and natural persons double taxation will result on the earnings of a corporation to the extent that such are distributed as dividends unless some method is devised to exempt either the corporation or its stockholders from the tax on such earnings,—and that Oklahoma has solved the difficulty by imposing an income tax on natural persons only. The court is of the opinion "that there is a substantial difference between corporations and natural persons for income tax purposes because, ordinarily, a large portion of the earnings of a corporation are paid to its stockholders as dividends and are income of both the corporation and such stockholders; that

it affords a rational basis for the classification provided by the statute here in question; that such classification rests on a difference having a fair and substantial relation to the object of the legislation; and that it results in like treatment of all persons similarly situated." Franklin vs. Carter, State Auditor, 51 F. (2d) 345. Streeter B. Flynn, of Oklahoma City (Geo. Otey, of Ardmore, and R. M. Rainey and Rainey, Flynn, Green & Anderson, all of Oklahoma City, on the brief), for appellant. F. M. Dudley, Asst. Atty. Gen. (J. Berry King, Atty. Gen., on the brief), for appellee.

Pennsylvania.

Buying, cleaning, and selling hair does not involve "manufacturing." For purposes of the Pennsylvania capital stock tax on corporations so much of the capital stock as is invested purely in a manufacturing plant and business and actually and exclusively employed in manufacturing is exempt. Here, so much of an assessment was assailed as covered the amount of capital stock invested in the business of buying, cleaning, and selling hair, exemption thereof being asserted under the statute. The Supreme Court of Pennsylvania affirms the judgment below sustaining the assessment, thus holding that the mere buying, cleaning, and selling of hair does not constitute "manufacturing." The court says: "A different product must be produced to bring the corporation within the exemption clause of the act, which is not the case here." Commonwealth vs. Densten Felt & Hair Co., 156 A. 164. W. Horace Hepburn, Jr., of Philadelphia, for appellant. Philip S. Moyer, Deputy Atty. Gen., and Wm. A. Schnader, Atty. Gen., for the Commonwealth.

CORPORATE MEETINGS HELD

During the past few weeks meetings of the corporations named below, among many others, have been held at some one of the offices of The Corporation Trust Company.

General Aviation Corporation	Tri-Continental Corporation
Carleton and Hovey Company	Iron Steamboat Company
Central States Edison Corp.	Rosenbaum Grain Corporation
Hugo Stinnes Corporation	Hugo Stinnes Industries, Inc.
Electric Power Associates	Safety Cable Company
P. Lorillard Company	American Shipbuilding Company
Ridder Brothers, Incorporated	The Lehman Corporation
Schenley Products Company	National Distributors Corp.

Minerals Separation North American Corporation
Peerless Insulated Wire & Cable Company
The Gelfand Manufacturing Company

Some Important Matters for December and January

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALABAMA—Annual Application Fee for permit to do business due February 1.—Domestic and Foreign Corporations.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

GEORGIA—Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

Excise or License Tax Report of Retail Merchants due on or before February 1.—Domestic and Foreign Corporations doing business as retail merchants.

LOUISIANA—Annual Report due on or before February 1.—Domestic Corporations.

NEW JERSEY—Annual Franchise Tax Report due on or before first Tuesday in February.—Domestic Corporations.

NEW YORK—Annual Franchise Tax based on Income of Business Corporations due on or before January 1.—Domestic and Foreign Business Corporations other than realty and holding companies.

OHIO—Report to Industrial Commission due during January.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

UNITED STATES—Fourth Instalment of Income Tax imposed for the calendar year 1930 due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

UTAH—Corporation License Tax due between November 15 and December 15.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1931.

Amendments to Delaware Corporation Law, 1931. Gives the full text of those parts of the law amended, indicating by brackets the matter repealed and by italics the new matter added.

Incorporation in Canada Under the Dominion Act. Explains the procedure for incorporation of Canadian companies, the requirements, taxes, maintenance of office, etc., and all the special features of the Dominion Companies Act. Attorneys with a client who may, because of tariff barriers, be considering the organization of a Canadian company to conduct the Company's Canadian or export business, will find this pamphlet extremely useful.

When Corporations Cross the Line. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

What Constitutes Doing Business. (Revised to April, 1930.) A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them also accessible either by case name or topic.

Questionnaire on Business Outside State of Organization. This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

Why a Transfer Agent? The question of why corporations, even those of small capitalization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

Why Corporations Leave Home. This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

Transfer Requirements Chart. This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.